

**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE, AS SCVURPP CONTRACTING AND
FISCAL AGENT,
AND EOA, INC.
FOR PROGRAM MANAGEMENT SERVICES**

THIS AGREEMENT dated July 1, 2006, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and EOA, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is one of 15 members of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP); and

WHEREAS, SCVURPPP was formed to implement the National Pollution Discharge Elimination System (NPDES) Permit (Permit) issued to the cities, County, and Santa Clara Valley Water District who discharge storm water to the San Francisco Bay; and

WHEREAS, these fifteen agencies have signed a Memorandum of Agreement (MOA) and pay annual assessments to cover the cost of programmatic activities related to implementing the NPDES permit; and

WHEREAS, on July 1, 2005, CITY assumed the responsibilities of Contracting and Fiscal Agent for SCVURPPP; and

WHEREAS, on or about July 3, 2001, CONSULTANT entered into a contract with the previous SCVURPPP Contracting and Fiscal Agent for the performance of Program Management and Administrative Services, which contract will expire on June 30, 2006; and

WHEREAS, Consultant has performed the functions of Program Manager and provided administrative services since September 4, 1997; and

WHEREAS, SCVURPPP retained the services of a consultant firm, Hilton, Farnkopf & Hobson, LLC, to review the program and found that SCVURPPP's program is more rigorously managed than any other of the five programs surveyed in California, that SCVURPPP's has management controls, Program Management self-audit procedures, budget monitoring and reporting requirements not found in any of the other programs, that based on various benchmark comparisons the SCVURPPP program is in line with other Bay Area program budgets and that this is noteworthy because it is the most heavily scrutinized (i.e., two State and Federal audits in past two years) and exercises the strongest management controls.

WHEREAS, SCVURPPP filed a NPDES joint permit application in February 2005, which expires _____, and requires reapplication for a new NPDES permit with the State of California Regional Water Quality Control Board; and the joint Permit was administratively extended on February 21, 2006, until a new Permit is issued by the Water Board; and

WHEREAS, on February 16, 2006, the SCVURPPP Management Committee voted to extend the EOA contract for Program Management services at this time, until such time as a new permit is in place, and to pursue an Request For Quote process after that time.

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide the services described in the Scope of Services, Appendix A, attached hereto and incorporated herein by this reference. The Schedule of Performance is set forth in Appendix C.

2. Time for Performance

The term of this Agreement shall be from July 1, 2006, through June 30, 2008 unless modified or terminated as provided in this Agreement.

3. Compensation

CITY agrees to pay CONSULTANT an amount not to exceed the fiscal year budgets contained in Appendix B, attached hereto and incorporated herein by this reference, in accordance with the rates set forth in Attachment B-1, as full compensation for the services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for services to the SCVURPPP Fiscal and Contract Agent Representative on a monthly basis.

4. Ownership of Documents

CITY, on behalf of SCVURPPP, shall have full and complete access to CONSULTANT's working papers and documents during progress of the work. Upon termination of this Agreement, all documents of any description prepared by CONSULTANT shall become the property of the SCVURPPP and shall be delivered to CITY as agent for SCVRUPP. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

5. Conflict of Interests

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. CONSULTANT shall not accept employment or any obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.

6. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

7. Compliance with Laws

- a) CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability, or any other basis to the extent prohibited by

federal, state, or local law. All employees of CONSULTANT shall be treated during employment without regard to their race, creed, color or national origin.

- b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

9. Indemnity

CONSULTANT agrees to defend, indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CONSULTANT, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONSULTANT's performance under this Agreement.

10. Insurance

During the life of this Agreement, CONSULTANT shall take out and maintain policies of insurance as specified in Appendix B, Attachment B-2.

11. CITY Representative

LORRIE GERVIN, P.E., Environmental Division Manager shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

12. CONSULTANT Representative

ADAM W. OLIVIERI, P.E., Vice President, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

13. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Lorrie Gervin, Environmental Division Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT:
Adam W. Olivieri
EOA, Inc.
1410 Jackson St.
Oakland, CA 94612

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

14. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

15. Termination

Either party may terminate this Agreement by giving thirty (30) days written notice to the other. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at time of termination.

16. Entire Agreement; Amendment

This writing, together with Standard Consultant Agreement #A2455A dated July 3, 2001, constitutes the entire agreement between the parties relating to the services to be performed or

materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

17. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

18. Effect of Previous Agreement

The Standard Consultant Agreement: "Except as provided herein, all remaining provisions of _____ shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST: CITY CLERK

CITY OF SUNNYVALE ("CITY")

By _____
Deputy City Clerk

By _____
City Manager

APPROVED AS TO FORM:

EOA, INC. ("CONSULTANT")

Assistant City Attorney

By _____
Don M. Eisenberg, Ph.D., P.E.
President, Principal Engineer